IN THE HIGH COURT OF BOMBAY AT GOA

SECOND APPEAL NO. 107 OF 2006

PRABHAKAR YESHWANT NAGVEKAR AND ANR., ...Appellants

Versus

GAJANAN RAGHUNATH NAIK PRATAPRAO SARDESSAI(SIN.DEC.) REP.BY L.RS., ...Respondent

Mr. Vivek Dandekar, Advcoate for the appellants.

Mr. R. G. Ramani, Advocate for the respondents.

Coram:- S.A.BOBDE, J.

Date:- 16th March, 2007

P.C.

This second appeal is preferred against the concurrent findings of both the Courts below that the appellants are not entitled to convert the `gada' which they were permitted to keep on the respondent's land, into a structure. Both the Courts below have directed removal of the `gada' which was being converted into a structure by the apppellants, resulting in removal of the appellants' `gada' from the place, in question.

2. The appellants were, admittedly, permitted to keep the gada i.e. the mobile stall on the respondent's land sometime in late seventies. It appears that the appellants tried to convert it into a structure. Thereupon the respondents filed this suit. In this suit, the appellants claimed adverse possession and also raised a plea that the appellant was a mundkar. The matter was, therefore, referred to the Mamlatdar. The Mamlatdar held that the appellant was not a mundkar. This finding has been confirmed by the Additional Collector as well as the Administrative Tribunal.

3. Eventually, in this suit, it is held that the appellants are not

entitled to claim any adverse possession. Indeed, the assertion that the appellant is a mundkar cannot coexist with his plea that he is in adverse possession.

4. In these circumstances, there is no merit in the appellants' contention that they are being sought to be evicted without prayer for recovery of possession, since it is found that the appellants were permitted to keep their mobile cart which is the `gada' in the respondent's property. There is also no merit in the appellants' plea that there is no notice of termination of licence. There is no express licence given to the appellants which calls for any termination.

5. There is, therefore, no merit and no substantial question of law arises in the second appeal, which is, hereby dismissed.

S.A.BOBDE, J.

ssm.